

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE**

CHILDREN'S HEALTH DEFENSE, *et al.*,

Plaintiffs,

v.

FOOD & DRUG ADMINISTRATION,
et al.,

Defendants.

Case No. 1:21-cv-00200-CLC-CHS

MOTION TO DISMISS

Pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, Defendants United States Food and Drug Administration and Janet Woodcock, MD, move to dismiss the Amended Complaint and all claims asserted therein with prejudice. For the reasons set forth more fully in Defendants' accompanying Memorandum, Plaintiffs lack Article III standing to sue and fail to state a claim upon which relief may be granted. For these reasons, Defendants respectfully request that the Court grant this motion and enter an Order dismissing this case with prejudice and denying Plaintiffs' motion for a preliminary injunction.

CERTIFICATION

Pursuant to the Court's Order, "the parties must meet and confer prior to the filing of a motion to dismiss to determine whether it can be avoided." ECF No. 3. Defendants submit that the defects in Plaintiffs' Complaint and Amended Complaint are not the kind that can be cured by filing a further amended pleading. However, the

parties did confer prior to this Court entering a scheduling order and were “unable to agree that the pleading is curable by a permissible amendment.” *Id.* After this Court entered a scheduling order, Plaintiffs filed their Amended Complaint, which Defendants submit does not cure the defects in their original Complaint.

Dated: October 14, 2021

Respectfully submitted,

Of Counsel:

BRIAN M. BOYNTON
Acting Assistant Attorney General

DANIEL BARRY
Acting General Counsel
Department of Health and Human Services

ARUN G. RAO
Deputy Assistant Attorney General

WENDY VICENTE
Acting Deputy Chief Counsel, Litigation

GUSTAV W. EYLER
Director

JAMES ALLRED
Associate Chief Counsel
Office of the Chief Counsel
U.S. Food and Drug Administration
10903 New Hampshire Avenue
White Oak 31
Silver Spring, MD 20993-0002
(301) 837-7618
James.Allred@fda.hhs.gov

HILARY K. PERKINS
Assistant Director

/s/ Noah T. Katzen
NOAH T. KATZEN
KIMBERLY R. STEPHENS
Trial Attorneys
Consumer Protection Branch
U.S. Department of Justice
450 Fifth Street, N.W.
Washington, DC 20530
(202) 305-2428
Noah.T.Katzen@usdoj.gov
Kimberly.R.Stephens@usdoj.gov

Counsel for Defendants